



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

Subject: **INFORMATION:** Clarification on  
Modification of Lump Sum Federal  
Share – Project Agreement

Date: January 3, 2012

From: *Elissa K. Konove*  
Elissa K. Konove  
Chief Financial Officer

In Reply Refer To:  
HCFM-10  
(HCF-2012-002)

To: Directors of Field Services  
Division Administrators

This memorandum provides clarification on the treatment of project agreement modifications when using the lump sum method for setting the legal Federal share for eligible project costs.

The requirements in 23 C.F.R. 630.106(c) provide that project agreements may use either the pro rata or lump sum methods to set the Federal share. Under 23 CFR 635.120 if a change is approved for Federal participation on a project where the pro-rata method is employed, the Federal Highway Administration (FHWA) can participate in the eligible costs of that change at the pro-rata Federal share set in the project agreement. Total Federal funds on the project are thereby increased, at the pro-rata percentage, to cover the additional cost of the change, though the pro-rata Federal share remains unchanged.

On projects employing the lump sum method of setting the Federal share, total Federal funds are fixed. The effect of this fixed amount has often been interpreted as preventing the project agreement from being modified to add Federal funds, even though the change was consistent with 23 CFR 635.120. Following this interpretation had the effect of limiting the flexibility for State Departments of Transportation (DOTs) using the lump sum Federal share method as compared to State DOTs using the pro-rata Federal share method.

When is a Federal share using the lump sum method established? Per 23 CFR 630.106(f)(1)(ii), the Federal share of eligible project costs is established at the time the project agreement is executed with the agreement stating that Federal funds are limited to a specified dollar amount not to exceed the maximum legal limit.

What is FHWA's position on change orders and lump sum project agreements? Under 23 CFR 630.110(a), a modified project agreement may occur when certain changes to the

original project agreement (scope) are needed. In the event a change requires a modification to the project agreement resulting in increased costs, the lump sum may be modified by making an upward adjustment to the lump sum obligation to cover the increased costs associated with the changes. The lump sum specified within the project agreement may be modified by the State DOT for the additional Federal share of eligible project costs related to an approved change order, not to exceed the maximum legal Federal share. Furthermore, the Federal funds added to the original lump sum Federal share may only be applied to eligible work beyond the original project agreement (scope). Subject to the Division's determination that the State's accounting system can adequately segregate costs attributable to the change order from those related to the original authorization, such a change could potentially result in differing Federal share billing percentages for obligations related to the original scope of work, and for work related to the change order. Information pertaining to Federal share modifications under the lump sum method should be sufficiently documented in the remarks section of the project agreement.

Example: Assume a project with a total cost of \$2 million was established using the lump sum method, with an amount not to exceed \$1 million in Federal funds establishing a 50% reimbursement percentage. Based upon an approved change order, \$200,000 of additional eligible costs are added to the scope of the project. An additional lump sum Federal share equating to 80% of costs is authorized for this additional work only. The net result would be a Federal share for the original \$1 million and \$160,000 (80% of the additional \$200,000) in project costs for a total Federal lump sum participation amount not to exceed \$1,160,000. State billings would be reimbursed at 50% or 80% based on the actual, eligible work performed under each authorization in the above example.

What types of change orders on a project would allow the lump sum agreement amount to be increased after the contract is awarded? Valid reasons for increasing the Federal share for a lump sum agreement could result from approved project change orders beyond the original scope of work for such things as cost overruns from increased quantities, changes in site conditions, or unanticipated conditions. Such change orders must be supported and documented, and consistent with the National Environmental Policy Act requirements.

If you have any questions, please contact Mr. Dave Bruce at 802-828-4567 or Mr. David Bartz at 512-536-5906.